IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 414 OF 2006.
IN
NOTICE OF MOTION NO. 65 OF 2004
IN
SUIT NO. 16 OF 2004

Kamal Galani. ... Appellant.
Versus.
Subhi Construction Pvt.Ltd.
and others. ... Respondents.

Shri N.G.Thakkar, Senior Advocate with Shri G.C.Mohanty i/by M/s.Kirit Damania & Co. for the Appellant.

Shri Shyam Diwan, Senior Advocate with Ms.Chandana Salgaonkar Radia for Respondents Nos.1, 2 and 3.

Shri H.Toor i/by Shri M.B.Malkan for Respondents Nos.11 and 12.

Shri Ruchir Tolat for Respondents Nos.4 to 8.

CORAM : KSHITIJ R.VYAS, C.J., &
ABHAY S.OKA, J.

DATE : 20th June, 2006.

P.C.:

1. This Appeal is preferred by the original Plaintiff for challenging the Judgment and Order dated 20th April 2006 by which the learned single Judge of this Court disposed of the Notice of Motion taken out by the Appellant/Plaintiff for temporary injunction in the suit without granting any interim relief.

2. The Appellant/Plaintiff filed a suit for declaration that there is a valid and subsisting

agreement executed by the Respondents in favour of the Appellant for sale of the suit property described in the plaint as evidenced by Exhibits B and C to the plaint and as modified and described in paragraph 11 of the plaint. According to the case of the Appellant in November 2001 it was agreed by and between the Appellant and the Respondents Nos.1 to 8 that the Respondents Nos.2 to 8 shall sell on spot delivery contract the equity shares of Respondents Nos.2 to 8 of the Respondent No.1-company to the Appellant or to his nominees. The agreed price of the shares according to the Appellant was Rs.3.90 crores. According to the case of the Appellant all other terms and conditions were agreed to by and between him and the Respondents Nos.1 to 8. According to the Appellant on the basis of the negotiations and representations, he prepared a draft agreement and a declaration for approval of the Respondent Nos.1 to 8 and handed over the same to the Respondents Nos.2 and 3. Copies of the said documents have been annexed as Exhibits B and C to the plaint. According to the case of the Appellant, on the basis of the aforesaid drafts a public notice was published by the Solicitors of the Respondent No.1 in the newspaper for investigation of title. Public notice was accordingly published on 15th November 2001 to which objection was received in the form of a letter dated 3rd December 2001 from an Advocate representing one Walecha Engineering Ltd. It is the case of the Appellant that

in the meeting held subsequently between the parties, the Respondent No.2 and 3 suggested that they should have an option to sell the said land directly to the Appellant instead of selling the shares of the 1st Respondent held by the Respondents Nos.2 to 8 in favour of the Appellant. For this, the Respondents Nos.2 and 3 demanded extra consideration of Rs.15 lakhs for the purpose of settling the claim of Walecha Engineering Ltd. According to the case of the Appellant, he agreed to pay an extra consideration and Respondents Nos.1 to 8 agreed to sign the agreement and declaration with modification as above or an agreement for sale in favour of the Appellant. According to the case of the Appellant, as the concerned Respondents did not come forward to execute the agreement and declaration as per the draft, a public notice dated 20th May 2003 was published by the Attorneys of the Appellant in the Times of India informing the members of the public not to deal with the Respondents Nos.1 to 8 in respect of the said property. The Appellant issued Advocate's letter dated 8th December 2003 calling upon the Respondents Nos.1 to 9 to complete the transaction. He stated that the Appellant noticed that the Respondent No.10 was carrying on construction activities on the said land. As the demand made by the Appellant was not complied with, the present suit was filed.

3. The case of the Respondents Nos.1 to 8 in the reply filed to the Notice of Motion is that there was never a concluded contract between the Appellants and the Respondents Nos.1 to 8. According to the case of the said Respondents, there was some transaction between the Appellant and the Respondent No.9 and a total sum of Rs.1.5 lakhs has been allegedly paid by the Appellant to the Respondent No.9. The Respondent No.11 filed an affidavit contending that a building has been constructed by the 1st Respondent on the said property and he was a purchaser of certain premises in the building constructed by the 1st Defendant. The learned single Judge by the impugned order recorded a primafacie finding that there was no privity of contract between the Appellant and the Respondents Nos.1 to 8. The learned Judge also noted that a multi-storeyed building has already been constructed on the suit property.

4. The learned Senior Counsel appearing for the Appellant submitted that the documents annexed to the plaint show that there was a concluded contract of sale between the Appellant and the Respondents Nos.1 to 8. He submitted that the Respondents Nos.2 and 3 are in the habit of entering into transactions in respect of the suit property with various parties. He submitted that the learned Judge has committed a factual error by relying upon the reply dated 18th December 2003 inasmuch as no such reply was on record. He submitted that after

ad-interim order was passed the learned Single Judge, the first Respondent has taken risk of completing the construction. He submitted that there was a strong prima-facie evidence to show that a sum of Rs.11 lakhs was paid by the Appellant on the basis of the suit agreement. He submitted that the learned Single Judge ought to have atleast restrained the Respondents from creating any third party interests in respect of the suit property. Shri Diwan, the learned Senior Counsel appearing for Respondents Nos.1, 2 and 3, Shri Tolat appearing for Respondents Nos.4 to 8 and Shri Toor appearing for Respondents Nos.11 and 12 supported the impugned Judgment and order.

5. We have carefully considered the submissions. The Appellant is relying upon a draft agreement and draft declaration prepared in November 2001. It is the case of the Appellant that subsequently the terms of the draft agreement were modified. Admittedly as of today, there is no agreement in writing executed by any of the Respondents in favour of the Appellant. The Appellant is relying upon the public notice dated 20th May 2003. Even in the said public notice issued at the instance of the Appellant, it is stated that the Appellant has "concluded and confirmed negotiations" to purchase the suit property. In the said public notices, there is no reference to any concluded contract of sale between the parties. The payment of amount has been made by the

Appellant to the Respondent No.9. In view of this position, there is no reason to interfere with the prima-facie finding recorded by the learned Single Judge that there was no concluded contract of sale between the parties.

6. Moreover the learned Single Judge has noted that a building has come up on the suit property. The Appellant has failed to prove prima-facie case and therefore, the learned single Judge has rightly refused to grant injunction. If the construction of the building has been made during the pendency of the suit, it is obvious that all further actions and transactions of the Respondents in respect of the suit land and the building constructed thereon will be subject to the final outcome of the suit.

7. There is no reason to interfere with the discretionary order passed by the learned Single Judge of refusing to grant interim relief on the considerations which are relevant for grant or refusal of relief of interim injunction.

8. In view of what is stated above, the Appeal is devoid of any merit and the same is dismissed.

9. At this stage, the learned Counsel appearing for the Appellant prays that ad-interim relief which was

already granted in favour of the Appellant be continued for a reasonable time. The said prayer is opposed by the learned Counsel appearing for the Respondents. Considering the fact that ad-interim relief is operating for sometime, the same is extended for a further period of six weeks from today.

CHIEF JUSTICE

ABHAY S.OKA, J.